

Informal Dispute Resolution (IDR) Guidelines for Residential or Assisted Living Facilities

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1. Introduction

- 1.1 The Idaho Department of Health and Welfare, Bureau of Facility Standards (Department), and the Idaho Assisted Living Association (IDALA), representing residential or assisted living facilities (RALFs), have established the following independent review process for the purpose of resolving disputes with RALFs over deficiencies cited during a survey. The survey process brings together a number of professional interests. The Department, through the survey team, is responsible for meeting a large array of survey requirements in a thorough, professional manner. The facilities are interested in being evaluated fairly and consistently by qualified survey personnel. The foremost interest of all parties is the resident's right to the highest possible quality of care and life, including the prompt correction of deficiencies that interfere with this right.
- 1.2 This independent review process has been developed with the expectation that all parties act in good faith, treat others with respect and professionalism, and recognize that there will be issues of honest disagreement.

2. Guiding Principles

- 2.1 The Level 2 IDR meeting described in this document serves as an administrative review of state licensing deficiencies as provided in IDAPA 16.05.03.300. The Department has supplemented these minimum requirements by adding preliminary steps designed to resolve disputes prior to Level 2.
- 2.2 This process does not alter or delay the required timetables associated with licensure or certification, termination or other adverse actions.
- 2.3 This informal process does not limit any other appeal available under state and federal laws or regulations.
- 2.4 Facilities may not use the informal process to delay the formal imposition of remedies or to challenge any other aspect of the survey or enforcement process including:
 - 2.4.1. Remedy(ies) imposed by the enforcing agency;
 - 2.4.2. Failure of the survey team to comply with a requirement of the survey process;
 - 2.4.3. Inconsistency of the survey team in citing deficiencies among facilities; or
 - 2.4.4. Inadequacy or inaccuracy of the informal dispute resolution process.

- 2.5. Allegations of surveyor misconduct should not be reported under this process but rather to the Supervisor of Residential or Assisted Living or Bureau Chief for separate resolution.

3. Objectives

- 3.1. The principal objectives of this independent review process are to:
 - 3.1.1. Facilitate resolution of differences throughout the survey process through constructive, clear, and ongoing communication.
 - 3.1.2. Provide a vehicle informally to resolve disputes related to survey deficiencies,
 - 3.2.3. Promote the mutual exchange of clarifying information, which enhances the understanding of survey decisions and minimizes conflicts and disagreements.
- 3.2. The review process depends upon open discussion of concerns and significant issues while surveyors are on-site. It also provides a means to informally pursue resolution of citation disagreements at higher levels of the survey organization, if requested.
- 4. General Process --** It is critical that any deficiency disputes be resolved at the earliest possible date. Once the survey report has been issued in final form and formal distribution made, it becomes much more difficult to resolve a conflict regarding any deficiency.
- 5. During the Entrance Conference --** The process begins at the entrance conference when the team coordinator explains the survey process and the nature of the information to be gathered during the survey

6. During the Survey

- 6.1. Surveyors will use all information made available to them in making their decisions about facility compliance. Information to support survey decisions regarding noncompliance must be fully and properly documented. Facility and survey staff must communicate regularly to ensure that surveyors have access to all relevant information throughout the process. Survey staff are expected to seek information from responsible facility representatives and give the facility a reasonable opportunity to provide additional information on a timely basis, normally no later than the day previous to the scheduled exit conference.
- 6.2. If issues arise during the survey that individual surveyors and facility staff cannot resolve, the team leader and the facility's administrator should meet and attempt to overcome any misunderstanding or miscommunication. This meeting may include other surveyors and facility staff as necessary.

7. During the Exit Conference

- 7.1. The survey team will communicate its tentative citation and the general basis for the citations to the facility staff at the exit conference. Due to time constraints, all examples may not be given. The team will give appropriate consideration to any additional timely information in determining the facility's compliance with requirements. Such information must be submitted (faxed or sent by overnight mail) within two (2) business days of the exit conference in order to be considered in preparing the survey report.
- 7.2. Because of the informal nature of the exit conference and the preliminary nature of the deficiencies discussed, facility attorneys are not expected to be present at the conference. The exit conference is not intended to be a preliminary hearing on the merits of deficiency citations. Any independent consultants engaged by the facility for assistance may attend the exit conference as observers.
- 7.3. The Department audiotapes the exit conference. A tape is left with the facility at the end of the exit. The primary reason(s) are to allow the facility to begin the Plan of Correction before receiving the final report (2567) and for internal training purposes.
- 7.4. The Department may cancel or end the exit conference if the facility creates an environment that is hostile or inconsistent with the informal and preliminary nature of the exit conference. In such cases, a subsequent exit conference may be conducted at the discretion of the Department.

- 8. After the Exit Conference** -- Additional information which the facility believes will demonstrate compliance with the tentative deficiencies identified at the exit conference must be submitted to the survey team within two (2) working days of the exit conference as noted in Section 7.1 above. This short time frame is based on the fact that the surveyors begin preparing the formal survey report following the exit conference.

9. Level 1 Informal Dispute Resolution (IDR) Meeting After the Survey Report Is Issued

- 9.1. If the provider disagrees with the survey report findings, the provider may make a written request to the Chief of the Bureau of Facility Standards for a Level 1 IDR meeting. The request for the meeting must be made within ten (10) business days of receipt of the statement of deficiencies. The specific deficiencies for which the facility asks reconsideration must be included in the written request as well as the reason for the request for reconsideration. The facility's request will include sufficient information for the Bureau of Facility Standards to determine the basis for the provider's appeal.
- 9.2. The meeting may take place in person or by conference call. It will be conducted by the Chief of the Bureau of Facility Standards or his/her designee. The facility is

encouraged to present written evidence, e.g., documentation, records, etc., that the deficiency did not exist. The informal dispute resolution process is not to be used if the facility agrees that a deficiency existed but has been corrected and wants it erased from the record; agrees that a deficiency exists but disagrees with the requirement or remedy; or questions the validity of a rule or law.

- 9.3. The Bureau of Facility Standards will send a written decision to the facility within thirty (30) days of the IDR process/meeting. If the decision changes any deficiency determinations, a new statement of deficiencies will be generated by the Bureau to reflect the changes. Proposed enforcement actions will also be amended to reflect the deficiency changes.
- 9.4. If the facility does not prevail at the Level 1 IDR meeting and remedies are imposed by the Department, the facility may request a Level 2 IDR meeting through the Department.

10. Level 2 IDR Meeting After the Level 1 Meeting Decision Is Issued

- 10.1. If disputes have not been resolved after the above opportunities have been provided or if disagreement arises or continues after the facility receives the formal written survey report, the facility may request a Level 2 IDR meeting on the involved deficiencies.
- 10.2. The Administrator of the Division of Medicaid or his or her delegate conducts the IDR Level 2 meeting. At the request of the provider, a representative of the Idaho Commission on Aging will attend as an advisor to the Administrator.
- 10.3. Request for Level 2 IDR Meeting
 - 10.3.1. A facility shall request a Level 2 IDR meeting in writing, citing each disputed deficiency and sending the request to the person and address indicated in the survey transmittal letter.
 - 10.3.2. Any additional documentation submitted at the Level 2 IDR meeting must have been in existence in its submitted form and content as of the survey date. The exception to this is letters from physicians or other persons prepared at the request of the facility to provide additional information on a cited deficiency.
 - 10.3.3. In its request, the facility should indicate whether the facility wants to present its position in person, by telephone, or solely in writing and whether the facility will be represented by legal counsel at the meeting. Such information is necessary to ensure that the necessary arrangements are in place for the meeting.
 - 10.3.4. The date and time for the IDR will be set in consultation with the provider.

10.4. The Level 2 IDR Meeting

- 10.4.1. The Level 2 IDR meeting consists of a representative of the Administrator, the Supervisor of Residential or Assisted Living, and representative(s) of the provider. The provider can also request that a representative of the Ombudsman's Office be present.
- 10.4.2. Parties may participate in the Level 2 IDR meeting in person or by telephone. Any witnesses may also participate in person or by telephone. In addition, the parties to the meeting have the option of presenting their case entirely in writing without a meeting.
- 10.4.3. The Level 2 IDR is intended to be informal. There is no set procedure that must be followed. At the meeting, the provider and representatives of the Department will discuss the deficiencies in dispute. At the provider's request, a representative of the Ombudsman will also be present.
- 10.4.4. Parties have the option of being represented by legal counsel, but, because of the informal nature of the meeting and limited time for presentation, the use of attorneys is neither necessary nor encouraged. If the provider chooses to be represented by counsel at this Level 2 IDR Meeting, DHW must be notified in order for the state to also be represented by an attorney.
- 10.4.5. Although it is preferred that information submitted by the facility in support of its appeal be received with the facility's request for a Level 2 IDR meeting, the facility can submit additional information at the meeting.

10.5. Level 2 IDR Meeting Suggestions

- 10.5.1. The provider should address survey findings one at a time, explaining why the provider disagrees with the finding and pointing out any documentation that supports the facility's position.
- 10.5.2. Submission of large volumes of overly detailed, redundant, or irrelevant material will hamper the review process.

10.6. Level 2 IDR Decision

- 10.6.1. The representative of the Administrator reviews the information presented by the provider and, in consultation with the Supervisor of Residential or Assisted Living and the Ombudsman's representative (if participating), decides whether each survey finding on appeal is affirmed or modified.

- 10.6.2. The facility shall be notified of the review decision or if further deliberations are needed within thirty (30) days of the Level 2 IDR meeting.
- 10.6.3. If the Level 2 IDR review results in a decision to modify or delete a deficiency, the following steps will be taken:
 - 10.6.3.1. If the deficiency is to be deleted, the deficiency citation will be electronically deleted from the Bureau data system. Any enforcement action(s) imposed solely because of that deficiency citation would be rescinded.
 - 10.6.3.2. If the deficiency is to be amended (but still cited), the deficiency will be electronically revised. Any enforcement action(s) imposed will be reviewed by the Department for continued applicability.
 - 10.6.3.3. The facility has the option to request a “clean” (new) copy of the survey report. However, the clean copy will be the releasable copy only when a “clean” (new) POC is both provided and signed by the facility. The original survey report is disclosable when a clean POC is not submitted and signed by the facility. In either case, any CMS 2567 and/or POC which is revised or changed as a result of informal dispute resolution must be disclosed to the ombudsman and other parties as required by law.
- 10.7. IDR Appeal – If a provider continues to disagree with the decision resulting from the Level 2 IDR meeting, the provider may appeal the decision by following the instructions for appeal given at the end of the Level 2 IDR decision letter.